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16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**  
18 **SAN JOSE DIVISION**

19 PATRICIA WEEKS, ALICIA HELMS, BRIAN  
20 MCCLOY, and ADRIAN ALCARAZ, on  
21 behalf of themselves and all others similarly  
22 situated,

23 Plaintiffs,

24 v.

25 GOOGLE LLC,

26 Defendant.

Case No. 5:18-cv-00801-NC

**SECOND AMENDED CLASS ACTION  
COMPLAINT FOR:**

- 1. **Breach of the Covenant of Good Faith and Fair Dealing;**
- 2. **Violation of California’s Unfair Competition Law;**
- 3. **Violation of California’s Consumers Legal Remedies Act; and**
- 4. **Fraudulent Concealment.**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Patricia Weeks, Alicia Helms, Brian McCloy, and Adrian Alcaraz (“Plaintiffs”),  
2 individually and on behalf of all others similarly situated, allege as follows against Defendant Google  
3 LLC.

4 **SUMMARY OF THE ACTION**

5 1. This action is brought on behalf of individuals who purchased Pixel and Pixel XL  
6 (“Pixel”) smartphones. The Pixel is defective: its microphones are prone to failure. The defect  
7 compromises the Pixel’s core functionality, preventing consumers from communicating by voice call  
8 and from using features like Google Assistant, a counterpart to Apple’s “Siri” for the iPhone.

9 2. Google designed, manufactured, marketed, and sold the Pixel. It promoted the Pixel as a  
10 premium product, pricing it from \$649 to \$869. Yet, immediately after launching the Pixel, Google  
11 heard directly from numerous customers who were experiencing microphone failures. In spite of the  
12 many complaints it received shortly after launch—and its public admission that the phones have a  
13 “faulty microphone”—Google continues to sell the Pixel without telling purchasers about the  
14 microphone defect. Moreover, instead of fixing defective Pixels or providing consumers with refunds  
15 or non-defective phones, Google has exercised its discretion under the warranty to knowingly replace  
16 defective Pixels with other defective Pixels. Google has thereby frustrated consumers’ reasonable  
17 expectations under the warranty, causing many—including Plaintiffs Helms, McCloy, and Alcaraz—to  
18 encounter the microphone defect on multiple devices.

19 3. The microphone defect in the Pixel existed at the time the phones were sold. Plaintiffs  
20 were consequently deprived of the benefit of their bargain, and bring this action to obtain relief for  
21 themselves and other Pixel purchasers.

22 **PARTIES**

- 23 4. Plaintiff Patricia Weeks is a citizen of the state of Florida.
- 24 5. Plaintiff Alicia Helms is a citizen of the state of North Carolina.
- 25 6. Plaintiff Brian McCloy is a citizen of the state of Illinois.
- 26 7. Plaintiff Adrian Alcaraz is a citizen of the state of California.
- 27 8. Defendant Google LLC is incorporated under Delaware law and maintains its principal

28 place of business at 1600 Amphitheater Parkway, Mountain View, California 94043.

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**JURISDICTION, VENUE, AND CHOICE OF LAW**

9. This Court has jurisdiction over this lawsuit under the Class Action Fairness Act, 28 U.S.C. § 1332, because this is a proposed class action in which: (1) there are at least 100 class members; (2) the combined claims of class members exceed \$5,000,000, exclusive of interest, attorneys’ fees, and costs; and (3) Plaintiffs and Google are domiciled in different states.

10. The Court has personal jurisdiction over Google LLC because its principal place of business is within this District and it has sufficient minimum contacts in California to render the exercise of jurisdiction by this Court proper and necessary.

11. Venue is proper in this District under 28 U.S.C. § 1391(b) because Google’s principal place of business is within this District, a substantial part of the events or omissions giving rise to the claims occurred in this District, and Google’s terms of sale and service provide that disputes relating to the Pixel are to be adjudicated in this county.

12. California law applies to the claims of all Plaintiffs and class members because the practices at issue here were conceived, reviewed, approved, and otherwise controlled from Google’s headquarters in Mountain View, California. Employees at Google’s headquarters designed and engineered the Pixel hardware and software. Promotional activities, product packaging, and literature were developed and coordinated at, and emanated from, Google’s California headquarters. The Pixel launch event was held in San Francisco. Google made critical decisions concerning the development, marketing, and advertising of the Pixel in California. Misrepresentations and omissions alleged herein were made by Google employees based in California and were contained on Google’s website, which is maintained by Google employees based in California. Google also developed its express warranty, warranty policies, and customer service protocols in California.

13. In addition, Google’s Terms of Sale for Devices—which apply to the claims of those who purchased devices from Google—specify that “[t]he laws of California, U.S.A. apply to these terms, excluding California’s choice of law rules, and will apply to any disputes arising out of or relating to these Terms. Claims arising out of or relating to these Terms will be subject to the exclusive

1 jurisdiction and venue of the courts in Santa Clara County, California, U.S.A.”<sup>1</sup> Google’s Terms of  
2 Sale further provide that “use of any Google services through your Device . . . is subject to the  
3 applicable terms and conditions for those services, including the Google Terms of Service.”<sup>2</sup>

4 14. Moreover, irrespective of the seller’s identity, Google’s Terms of Service apply to all  
5 claims relating to the Pixel and its components and features. The Terms of Service define “Services” to  
6 include both “products and services.” Accordingly, the Terms of Service apply to the Pixel itself, to  
7 Google’s Android operating system on which the Pixel runs, and to product attributes at issue in this  
8 case, including the microphones and Google Assistant. The Terms of Service provide that “[b]y using  
9 our Services, you are agreeing to these terms.”<sup>3</sup> In order to progress through the Pixel’s mandatory set-  
10 up process—and regardless of whether they purchased the device from Google or another seller—  
11 customers consent to Google’s Terms of Service, by tapping a box that states, “I agree.” Google’s  
12 Terms of Service contain the same operative language as Google’s Terms of Sale: “The laws of  
13 California, U.S.A., excluding California’s conflict of laws rules, will apply to any disputes arising out  
14 of or relating to these terms or the Services. All claims arising out of or relating to these terms or the  
15 Services will be litigated exclusively in the federal or state courts of Santa Clara County, California,  
16 USA, and you and Google consent to personal jurisdiction in those courts.”<sup>4</sup>

17 **INTRADISTRICT ASSIGNMENT**

18 15. Assignment to the San Jose Division is appropriate under Local Rule 3-2(c) because  
19 Google is headquartered in Mountain View, California and a substantial part of the conduct at issue in  
20 this case occurred in Santa Clara County. Pursuant to 28 U.S.C. § 636(c), all parties have consented to  
21 the case’s assignment to the Honorable Nathanael Cousins.

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25 <sup>1</sup> [https://web.archive.org/web/20160910174222/https://store.google.com/intl/en-US\\_us/about/device-terms.html](https://web.archive.org/web/20160910174222/https://store.google.com/intl/en-US_us/about/device-terms.html)  
(last visited Aug. 24, 2018).

26 <sup>2</sup> *Id.*

27 <sup>3</sup> <https://web.archive.org/web/20151009180153/http://www.google.com/intl/en/policies/terms/> (last visited Aug.  
28 24, 2018); *see also* <https://policies.google.com/terms> (last visited Aug. 24, 2018).

<sup>4</sup> *Id.*

**PLAINTIFF-SPECIFIC ALLEGATIONS**

**Plaintiff Patricia Weeks**

16. Patricia Weeks purchased a Pixel in Florida from the online Google Store for \$749 on December 2, 2016.

17. While engaging in pre-purchase research about the phone, Dr. Weeks saw several advertisements in which Google made representations about the Pixel’s high quality and functionality, including: (1) advertisements promoting Google Assistant with the catch phrase, “Ok Google”; and (2) advertisements comparing Google Assistant favorably to Apple’s interactive personal assistant Siri. After Dr. Weeks purchased the phone, but before she began using it, Google provided her with information about her phone—including the Google Assistant feature—through its standardized set-up process.<sup>5</sup> Before using her Pixel, Dr. Weeks also saw its external packaging, which discloses the Google Assistant feature. At no time before using the phone did Dr. Weeks see any disclosure that the Pixel’s microphones have a propensity to fail.

18. Dr. Weeks never had an opportunity to negotiate the terms of purchase or warranty with Google. She was not aware prior to purchase of any disclaimer of or limits on warranty coverage.

19. After only a few weeks of normal usage (*i.e.*, making phone calls, sending text messages, using applications, and accessing the internet), Dr. Weeks’s phone began to malfunction. She first noticed that something was wrong when she could not use the Google Assistant feature. Then she discovered that callers on the other end of the line could not hear her speaking.

20. Dr. Weeks contacted Google on March 2, 2017 to report her microphone failure and seek assistance. A Google representative sought to troubleshoot the problems, but was unable to fix her phone. The Google representative admitted to Dr. Weeks that the phone was defective and that Google was aware of the microphone problems.

21. Dr. Weeks asked Google for her money back or for a new, non-defective replacement. Google refused.

22. As a result of the microphone defect and Google’s failure to provide warranty service, Dr. Weeks no longer uses her Pixel and instead uses a replacement phone, manufactured by Motorola.

<sup>5</sup> *E.g.*, <https://www.youtube.com/watch?v=gCoLpcYgJyA> (last visited Apr. 9, 2018).





1 refurbished replacement Pixel. But after only a few days of ordinary usage, the microphones on the  
2 refurbished Pixel failed in the same manner as his first Pixel.

3 39. On December 6, 2017, Mr. McCloy again contacted Google Support and reported the  
4 microphone failures. After another round of unsuccessful troubleshooting, a Google representative told  
5 Mr. McCloy that the problem was hardware-related, and offered to send another replacement Pixel.  
6 The Google representative told Mr. McCloy that his next refurbished Pixel would “go through  
7 additional quality assurance testing to ensure the phone worked properly.”

8 40. After a few days of ordinary use, the microphones on the second replacement Pixel also  
9 failed.

10 41. In May 2018, Mr. McCloy made an insurance claim through Asurion—the insurance  
11 company through which he procured an insurance policy in conjunction with the initial purchase of his  
12 Pixel from Verizon—at his local Verizon retail store relating to the second refurbished Pixel. As a  
13 result of his insurance claim, Mr. McCloy received yet another (third) refurbished Pixel. Within a few  
14 months after receiving the third refurbished replacement, he once again experienced microphone  
15 failure. Individuals could not hear him talking on the other end of the line during phone calls and  
16 Google Assistant no longer functioned as the phone does not recognize voice commands due to the  
17 microphone failure.

18 42. Mr. McCloy still has his third refurbished replacement Pixel. Its microphones still do  
19 not work.

20 43. Mr. McCloy did not know that the Pixel has defective microphones when he bought his  
21 phone. Had Google disclosed the defect to him before his purchase, e.g., on the Pixel’s external  
22 packaging or during set up, he would not have bought a Pixel, would not have bought a Pixel at the  
23 price he did, or would have returned his Pixel during Verizon’s 14-day remorse period.<sup>7</sup>

24 **Plaintiff Adrian Alcaraz**

25 44. Plaintiff Adrian Alcaraz purchased a Pixel XL in California from Verizon’s online store  
26 for \$869.99 on or about December 19, 2016.

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28 <sup>7</sup> <https://www.verizonwireless.com/one-support/return-policy/> (last visited Apr. 9, 2018).



1           45. Before making this purchase, Mr. Alcaraz researched the Pixel and Pixel XL. In the  
2 course of that pre-purchase research, Mr. Alcaraz saw numerous advertisements in which Google made  
3 representations about the Pixel's high quality and functionality, including advertisements comparing  
4 Google Assistant favorably to Apple's interactive personal assistant Siri. After Mr. Alcaraz purchased  
5 the Pixel XL, but before he began using it, Google provided him with information about the phone—  
6 including the Google Assistant feature—through its standardized set-up process.<sup>8</sup> Before using his  
7 Pixel, Mr. Alcaraz also saw its external packaging, which discloses the Google Assistant feature. At no  
8 time before using his Pixel XL phone did Mr. Alcaraz see any disclosure that the Pixel's microphones  
9 have a propensity to fail.

10           46. Mr. Alcaraz never had an opportunity to negotiate the terms of purchase or warranty  
11 with Google. He was not aware prior to purchase of any disclaimer of or limits on warranty coverage.

12           47. After approximately one week of normal usage (i.e., making phone calls, sending text  
13 messages, using applications, and accessing the internet), Mr. Alcaraz's Pixel XL began to malfunction.  
14 He noticed that he could not get the phone to respond to voice commands and discovered that callers on  
15 the other end of the line could not hear him speaking. He also discovered that the Google Assistant  
16 feature was inoperable.

17           48. After an ineffective troubleshooting session with Verizon, Mr. Alcaraz contacted Google  
18 in late February 2017 to report the microphone failure and seek assistance. A Google representative  
19 tried to troubleshoot the problem, but was unable to fix the phone. During the call, the Google  
20 representative acknowledged that the phone was defective and said Mr. Alcaraz would receive a  
21 refurbished Pixel XL as a replacement.

22           49. Mr. Alcaraz received a refurbished replacement Pixel XL on or about March 1, 2017.  
23 Two weeks after receiving it, the replacement Pixel XL began to malfunction. Mr. Alcaraz called  
24 Google, which again provided ineffective troubleshooting and ultimately approved a second  
25 refurbished replacement Pixel XL.

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28 <sup>8</sup> *E.g.*, <https://www.youtube.com/watch?v=gCoLpcYgJyA> (last visited Aug. 22, 2018).



## Google Launches the Pixel

57. Marketed as “the first phone by Google,” Google released the Pixel on October 20, 2016, after just nine months of development time—“an incredibly short amount of time to bring a smartphone to market,” according to industry analyst ARS Technica.<sup>11</sup>

58. Google controls the design, development, marketing, sales, and support for the Pixels. The phones bear Google’s logos and the phrase “Made by Google.” Google directed virtually every aspect of the development and manufacture of the phones.<sup>12</sup> “Because it fully designs and sells the Pixel handsets,” Google holds itself out as the original equipment manufacturer of the devices.<sup>13</sup> In the same way that Apple contracts with Foxconn to assemble and build iPhones, Google engaged HTC as a contract manufacturer to assemble and build the Pixels at its direction.<sup>14</sup>

59. Designed to compete with the iPhone, the Pixel is a premium smartphone priced at between \$649 and \$849, significantly higher than the average smartphone price.

60. Google sells the Pixel directly to consumers as well as through authorized resellers Verizon and Best Buy.<sup>15</sup>

61. Google extends a written warranty to those who “purchased [the] phone from Google or its authorized resellers.”<sup>16</sup> Under the terms of its express warranty, “Google warrants that a new phone . . . will be free from defects in materials and workmanship under normal use . . . for one year from the date of original retail purchase . . . .”<sup>17</sup>

<sup>11</sup> Ron Amadeo, *Was the Google Pixel Built in a Mere 9 Months? It Would Explain A Lot...*, ARS Technica (Oct. 24, 2016), available at <https://arstechnica.com/gadgets/2016/10/the-google-pixel-a-nine-month-dash-to-mold-an-htc-phone-into-a-google-product/> (last visited Apr. 6, 2018).

<sup>12</sup> <https://www.theverge.com/a/google-pixel-phone-new-hardware-interview-2016> (last visited Apr. 5, 2018).

<sup>13</sup> Ron Amadeo, *Google Pixel Review: The Best Android Phone, Even If It Is A Little Pricey*, ARS Technica (Oct. 18, 2017), available at <https://arstechnica.com/gadgets/2016/10/google-pixel-review-bland-pricey-but-still-best-android-phone/> (last visited Apr. 9, 2018).

<sup>14</sup> *Id.*

<sup>15</sup> <https://www.androidcentral.com/where-buy-pixel-us> (last visited Apr. 6, 2018).

<sup>16</sup> <https://support.google.com/store/troubleshooter/3070579?hl=en#ts=7168940%2C7168941> (last visited Feb. 5, 2018).

<sup>17</sup> *Id.*

1 62. Google and its authorized resellers allow Pixel purchasers to return their devices for a  
2 full refund within approximately two weeks after purchase.<sup>18</sup>

3 63. Google announced the Pixel at a launch event in San Francisco on October 4, 2016. The  
4 YouTube video of the event was linked to by technology publications and viewed over 500,000 times.<sup>19</sup>  
5 The functionality of the Google Assistant, along with the Pixel’s high quality and Google’s overall  
6 responsibility for it, figured prominently in Google’s marketing presentation. Representations Google  
7 made at the launch event concerning its phone include:

- 8 • “The first phone made by Google inside and out.”
- 9 • “When I look ahead at where computing is headed, it’s clear to me that we are evolving from a  
10 mobile first to an AI first world. At the heart of these efforts is our goal to build the Google  
11 Assistant. Which is why, today we are going to bring the assistant to . . . the context of the  
12 phone, which you always carry with you . . . .”
- 13 • “Pixel is the first phone with the Google Assistant built in.”

14 64. Google demonstrated the Google Assistant functionality at the launch event. One  
15 Google presenter, for example, asked Google Assistant to play a song by the Lumineers. When the  
16 Pixel began to execute the voice command, the Google presenter narrated, “the assistant knows that I  
17 like to listen to music on youtube, so that’s the app it opens up.”<sup>20</sup>

18 65. Google also rolled out advertisements and marketing materials that emphasized the  
19 Pixel’s sound quality, microphones, and Google Assistant function as high-quality features that  
20 justified the premium price. See ¶¶ 17, 25, 34, 45, *supra*.

21 66. Before purchasing their Pixels, all Plaintiffs visited Google’s dedicated Pixel web page,  
22 where consumers can purchase the device directly from Google, and which describes the device in  
23 detail. That web page states, among other things, that the phones have “Crisp sound quality with single  
24 bottom-firing speaker”; adaptive audio amplifier to maximize speaker performance and durability”; and

25 <sup>18</sup> <https://support.google.com/store/answer/2411741?hl=en> (last visited Apr. 9, 2018);  
26 <https://www.verizonwireless.com/one-support/return-policy/> (last visited Apr. 9, 2018);  
27 [https://www.bestbuy.com/site/help-topics/return-exchange-  
policy/pcmcat260800050014.c?id=pcmcat260800050014](https://www.bestbuy.com/site/help-topics/return-exchange-policy/pcmcat260800050014.c?id=pcmcat260800050014) (last visited Apr. 9, 2018).

28 <sup>19</sup> <https://www.youtube.com/watch?v=p1qHV6ReJLI&feature=share> (last visited Feb. 5, 2018).

<sup>20</sup> *Id.*

1 “3 microphones . . . with noise cancellation.”<sup>21</sup> The web page also prominently advertises the Google  
2 Assistant feature. All Plaintiffs saw these representations on Google’s website.

3 67. After purchasing but before using their Pixels, all Plaintiffs were required to, and did,  
4 undertake Google’s standard Pixel set-up process on their devices. During this process, Plaintiffs  
5 interacted with Google about their Pixel, Google provided information about how to use the phone  
6 (including Google Assistant), and Plaintiffs conducted general set-up activities like: (1) connecting to  
7 the internet; (2) migrating data; (3) updating software; (4) linking the phone to their Google accounts;  
8 (5) scanning their fingerprints; (6) signing up for Google’s cloud backup service; and (7) training the  
9 Google Assistant to recognize their voices using the phrase “OK Google.”<sup>22</sup> During the set-up process,  
10 each of the named Plaintiffs signed into their Google account and agreed to Google’s Terms of Service.

11 68. Prior to using their Pixels, Plaintiffs encountered Google’s external packaging of the  
12 Pixel, which highlighted the Google Assistant feature.

13 69. Each Plaintiff was exposed to specific representations by Google prior to and  
14 immediately after purchase (and within the time period in which they could have returned their Pixels  
15 for a full refund). At none of these times did Google disclose the microphone defect to any Plaintiff.  
16 Google failed to disclose the defect to Plaintiffs despite being aware of the defect since no later than the  
17 day after it released the Pixel.

### 18 **The Microphone Defect Manifests Immediately After Launch**

19 70. The Pixel suffers from a latent defect—though it appears to function normally when  
20 new, the Pixel’s microphones have a substantial propensity to fail. Such microphone failure renders the  
21 phones unusable for telephone calls and makes it impossible to use Google Assistant.

22 71. Immediately after releasing the Pixels in October 2016, Google began receiving  
23 complaints concerning the microphone defect on its “Pixel Phone Help” website.<sup>23</sup> Google also

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26 <sup>21</sup> [https://web.archive.org/web/20161005090908/https://store.google.com/product/pixel\\_phone](https://web.archive.org/web/20161005090908/https://store.google.com/product/pixel_phone) (last visited Apr.  
10, 2018).

27 <sup>22</sup> *E.g.* <https://www.youtube.com/watch?v=gCoLpcYgJyA> (last visited Apr. 9, 2018).

28 <sup>23</sup> [https://support.google.com/pixelphone/forum/AAAAb4-OgUsIW\\_gxTpXX3s/?hl=by](https://support.google.com/pixelphone/forum/AAAAb4-OgUsIW_gxTpXX3s/?hl=by) (last visited Feb. 5,  
2018).

1 monitored complaints posted on other social media forums, such as Reddit.<sup>24</sup> On October 21, 2016—  
 2 the day after the phones were released—Google announced on its website that it would investigate the  
 3 problem.<sup>25</sup> Google has thus known of the Pixel microphone’s propensity to fail since at least the day  
 4 after the Pixel became available to the public—well before each Plaintiff bought his or her Pixel.

5 72. Since those initial complaints, a large volume of consumers have posted online about  
 6 microphone and audio failures, including as part of a twitter hashtag campaign entitled #defectivepixel.  
 7 Pixel owners have also submitted a change.org petition entitled “Google Needs to Support Fixes For  
 8 Their Phones.”<sup>26</sup> Consumers report that the microphones stop working after a very short period of use,  
 9 rendering the devices unsuitable for their main function—talking on the phone. Publicly available  
 10 complaints demonstrate that the microphone defect manifests the same way across Google’s customer  
 11 base, preventing consumers from using the phones:

- 12 • **10/20/16:** “Received my pixel today and after a few hours of use and set up the microphone  
 13 stopped working entirely . . . . I factory reset the phone and the issue still persists . . . .”<sup>27</sup>
- 14 • **10/24/16:** “Have had my Pixel since last Thursday (10/20), and [the microphone] stopped  
 15 working today (10/24).<sup>28</sup>
- 16 • **10/26/16:** “I definitely have a non-functioning mic. Google Assistant will not respond to my  
 17 voice and if I make a phone call the person on the other line cannot hear me.”<sup>29</sup>
- 18 • **12/23/16:** “I am also facing Microphone issue. I’m not able to hear other side on the call and  
 19 even they do not get my voice. Voice is not recording on video recorded with the camera app.  
 20 Voice Assistant is also not working. Contacted support and did all the troubleshooting but still  
 21 the problem persists.”<sup>30</sup>

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 23 <sup>24</sup> [https://www.reddit.com/r/GooglePixel/comments/58gx6c/got\\_my\\_new\\_pixel\\_has\\_microphone\\_issues/](https://www.reddit.com/r/GooglePixel/comments/58gx6c/got_my_new_pixel_has_microphone_issues/) (last  
 visited Apr. 9, 2018).

24 <sup>25</sup> *Id.*

25 <sup>26</sup> <https://www.change.org/p/google-needs-to-fix-their-phones> (last visited Apr. 9, 2018).

26 <sup>27</sup> [https://support.google.com/pixelphone/forum/AAAAb4-OgUsIW\\_gxTpXX3s#promoted](https://support.google.com/pixelphone/forum/AAAAb4-OgUsIW_gxTpXX3s#promoted) (last visited Feb. 2,  
 2018).

27 <sup>28</sup> [https://productforums.google.com/forum/#!topic/phone-by-google/IW\\_gxTpXX3s](https://productforums.google.com/forum/#!topic/phone-by-google/IW_gxTpXX3s) (last visited Feb. 2, 2018).

28 <sup>29</sup> *Id.*

<sup>30</sup> *Id.*

- 1 • **2/20/17:** “I am having the same issues now . . . Worked fine for a month or two. Now it  
2 doesn’t. Doesn’t work in call, doesn’t work with assistant. Doesn’t work with speaker on  
3 phone. . . . Hopefully no one calls me in an emergency needing help and can’t hear me talk.”<sup>31</sup>
- 4 • **5/31/17:** “I’ve had the phone less than 4 months. The sound keeps going away. In the middle  
5 of a conversation I can no longer hear people nor can they hear me. The phone will not answer  
6 when receiving a call. I cannot dial out. After turning it on and off about 3 times I can finally  
7 get a call through but to soon lose the caller because they could no longer hear me.”
- 8 • **6/26/17:** “Microphone is sporadically cut and people can’t hear me on phone conversations,  
9 voice notes or any other microphone dependent feature. This means, my phone can’t a) be used  
10 as a phone to place a call when required, as phone sporadically freezes and b) let me have a  
11 conversation with whoever I’m calling, as mic keeps bugging out. Imagine I have an accident  
12 and need to call 911?”<sup>32</sup>
- 13 • **7/22/17:** “I have the same problem with the microphone cutting out as well. It happens  
14 randomly but it can be bad to the point where the other party can not make out what I’m trying  
15 to say. I already spoke with a Google Rep and I was told it’s a possible hardware issue.”<sup>33</sup>
- 16 • **12/30/17:** “My pixel calls stopped function[ing] properly around 12/23/17. When I make a call,  
17 the phone app freezes but the call goes out. The person I am calling hears no one on the line. I  
18 hear nothing as well. When I try to hang up there is at least a 20 second delay in the disconnect  
19 tone. . . . I am at a loss for what to do. I cannot make calls . . . What can I do to fix this issue? I  
20 have cancer and two kids under 3. This is my only phone.”<sup>34</sup>
- 21  
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25 <sup>31</sup> *Id.*

26 <sup>32</sup> <https://productforums.google.com/forum/#!topic/phone-by-google/Z94uFoUOq90;context-place=forum/phone-by-google> (last visited Feb. 2, 2018).

27 <sup>33</sup> *Id.*

28 <sup>34</sup> [https://productforums.google.com/forum/#!topic/phone-by-google/RGIpDaLLD\\_A;context-place=forum/phone-by-google](https://productforums.google.com/forum/#!topic/phone-by-google/RGIpDaLLD_A;context-place=forum/phone-by-google) (last visited Feb. 2, 2018).





1 investigating this on a few devices to get to the root cause. We'll provide an update when we figure out  
2 what's causing this (and what you can do to resolve it)!"<sup>41</sup>

3 78. On November 8, 2016—before any Plaintiff bought a Pixel—Google reiterated its  
4 awareness of the problem, extending “[a]pologies to anyone who is encountering issues with the mic,”  
5 and stating it had not yet determined a root cause because “this bug is proving very hard to track  
6 down.” Later in November, faced with continuing complaints, the same employee again apologized,  
7 said Google was “still trying to get to the bottom of it,” and assured frustrated consumers that the  
8 company was “taking it seriously”—“[t]his is really frustrating us too!”<sup>42</sup>

9 79. On December 11, 2016, Google advised consumers, “We are still trying to assess the  
10 root cause. It may be a manufacturing issue that increases the chances of loose connection or possibly  
11 one bad batch.” In the same communication, Google apologized once again and admitted the defect is  
12 material: “[w]e realize that a working mic is pretty important to using the phone!”<sup>43</sup>

13 80. In January 2017, Google reported to its customers “there is no known software fix. So  
14 far, we’ve traced all failures back to hardware problems (normally a faulty internal connection).”<sup>44</sup>

15 81. Google’s standard practice of replacing defective Pixels with other defective Pixels,  
16 instead of providing refunds or non-defective phones, caused warranty claimants to experience repeat  
17 failures. By January 2017, increasing numbers of consumers were complaining to Google of  
18 microphone failures on replacement Pixels. On January 5, 2017, a Google employee acknowledged to  
19 one such consumer that Google’s public statements that the defect affected a minority of Pixels were  
20 inconsistent with customers experiencing the same failure in multiple devices: “[o]bviously, that  
21 doesn’t line up with your experience having seen this on 2/2 phones!” The employee then sought to  
22 reassure the consumer that, as of January 2017, Google had “taken steps to reinforce the failing  
23 connection in the factory to minimize the chances of this happening to new phones.”<sup>45</sup> Nevertheless,  
24 the microphone defect continued to manifest in Pixels.

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25 <sup>41</sup> *Id.*

26 <sup>42</sup> *Id.*

27 <sup>43</sup> *Id.*

28 <sup>44</sup> *Id.*

<sup>45</sup> *Id.*



1 failure. These tests determine, in part, whether solder joints can withstand outside stress and the  
2 electrical current and heat generated by the normal usage of a device over its useful life.

3 88. Because soldering problems are common, smartphone manufacturers use industry-  
4 standard tests to examine the reliability of solder joints, and to make any necessary adjustments in the  
5 manufacturing process before the phones are offered for sale to the public. Common testing procedures  
6 expose the phone's internal components to outside stress as well as to high temperatures and voltages,  
7 and employ x-rays, advanced microscopes, and imaging software to evaluate the strength and reliability  
8 of solder joints. Engineers then conduct a visual inspection and examine cross-sections of the solder  
9 joints to ensure that they meet manufacturing standards and are free of defects. If engineers detect a  
10 problem, they conduct a root cause analysis to determine its cause. Smartphone companies like Google  
11 also apply mathematical equations to the testing results to determine the lifespan of the components  
12 under various operating conditions. Google, like every smartphone manufacturer, engages in pre-  
13 release testing as a standard practice to examine and evaluate the solder joints within the products.

14 89. Google's responses to public complaints establish that it was aware of the microphone  
15 defect no later than the day after it released the Pixel. The immediate failure of the devices upon  
16 launch, coupled with the standard, pre-release testing Google performed on the devices before  
17 beginning to sell them, demonstrate Google knew or reasonably should have known of the defect well  
18 before Plaintiffs purchased their Pixels.

#### 19 **Google's Continued Deficient Response to the Microphone Problem**

20 90. Despite the growing volume of complaints, and Google's knowledge that the problems  
21 resulted from a systemic hardware defect related to the manufacturing process, Google declined to  
22 provide its customers with adequate warranty service in accordance with their reasonable expectations.

23 91. The Pixel warranty provides that, if there is a defect, "Google will in its sole discretion  
24 and to the extent provided by law either repair your Phone using new or refurbished parts, replace your  
25 Phone with a new or refurbished Phone functionally at least equivalent to yours, or accept the return of  
26 the Phone in exchange for a refund of the purchase price you paid for the Phone."<sup>51</sup>

27 \_\_\_\_\_  
28 <sup>51</sup> <https://support.google.com/store/troubleshooter/3070579?hl=en#ts=7168940%2C7169349> (last visited Apr. 10, 2018).

1 92. Instead of providing refunds or replacing Pixels with non-defective phones, Google  
 2 exercises its discretion under its warranty to provide consumers with Pixels that suffer from the same  
 3 systemic defect. Google representatives acknowledge this standard practice: “I’m very sorry to hear  
 4 that some of you are having the same problem with replacement phones and also that you aren’t getting  
 5 the level of customer service that you should.”<sup>52</sup>

6 93. The myriad complaints on Google’s Pixel User Community and other websites relate the  
 7 stories of consumers who, after reporting the microphone defect to Google, received another Pixel from  
 8 Google that suffered from exactly the same defect:

- 9 • **11/25/16:** “My replacement device has acted in the identical manner that the original did.  
 10 Microphone goes out approximately 2 minutes into a phone call. I’ve also contacted Verizon  
 11 several times . . . . This has become absolutely absurd, unethical, and unprofessional.”<sup>53</sup>
- 12 • **1/1/17:** “I received my first Pixel on 12/12/16. I didn’t use the phone for long calls for the first  
 13 week. When I had any call longer than 15 minutes the mic stops and my client on the other end  
 14 is saying, ‘are you there, I can’t hear you.’ . . . This occurred several days in a row. I purchased  
 15 my phone through Best Buy and they sent a replacement. I have had the replacement for 4 days  
 16 . . . . On a call at the 20 min. mark the mic stopped. I hung up, redialed and mic worked but  
 17 once again stopped 10 min. into the call. So frustrating.”<sup>54</sup>
- 18 • **2/19/17:** “why isn’t Google coming clean to the public about this issue. We have people from  
 19 different parts of the world complaining about it here and the count is rising every single day.  
 20 Can’t be just one bad batch. Has to be multiple bad batches or a failure at the design/  
 21 manufacturing level. So, instead of doling out refurbished replacements to consumers, how  
 22 about providing refunds to people who want it. I don’t want to be stuck with multiple bad  
 23 replacements as has been the case with so many people on this thread. . . . Own up to it Google.  
 24 My two cents.”<sup>55</sup>

25  
 26 <sup>52</sup> [https://productforums.google.com/forum/#!topic/phone-by-google/IW\\_gxTpXX3s](https://productforums.google.com/forum/#!topic/phone-by-google/IW_gxTpXX3s) (last visited Feb. 2, 2018).

27 <sup>53</sup> *Id.*

28 <sup>54</sup> *Id.*

<sup>55</sup> *Id.*

- 1 • **2/19/17:** “I’m about to receive my 4<sup>th</sup> Pixel phone and have the same exact issue every time.  
2 Come on Google, acknowledge this problem and fix it.”<sup>56</sup>
- 3 • **2/20/17:** “Just got my refurb and surprise the mic isn’t working right out of the box. I now have  
4 \$1,400 tied up in 2 pixels (700 hold on my card), and haven’t been able to make or accept calls  
5 for 12 days and counting. . . . I’ve been lied to and misled by Google support. They refuse to let  
6 me talk to anyone above a tech specialist to give me an explanation about that. . . . Absolutely  
7 unacceptable. I’ve been a Google, Nexus, Pixel product enthusiast but not after this.”<sup>57</sup>
- 8 • **2/26/17:** “Why can’t Google process refunds instead of multiple faulty replacements?”<sup>58</sup>
- 9 • **2/27/17:** “If my third one from Verizon still causes me trouble, I’m calling Google to raise hell.  
10 If I could get a refund now, I’d do it in a heartbeat. So ready to move on.”<sup>59</sup>
- 11 • **3/1/17:** “Just received Pixel XL number 4. Downloaded contacts, updated phone, rebooted and  
12 made my first call. 7 minutes into the call, the person couldn’t hear me any more . . . just like  
13 the other 3 phones I had. . . . I don’t see any purpose in sending the 4<sup>th</sup> one back if they can’t  
14 guarantee I will get a newly created one without the issue instead of a refurbished piece of crap.  
15 So, what is the solution here? Do I call and complain and try and force them into a full refund?  
16 Is there truly a plan to fix these bricks and guarantee that returns will be replaced with new  
17 ones? How can you possibl[y] continue to ignore this issue to the level you have?”<sup>60</sup>
- 18 • **3/1/17:** “About to get my 5<sup>th</sup> Pixel tomorrow. On this last day I have to endure with this one its  
19 just gotten 1000 times worse . . . the microphone won’t work . . . . I can’t even have a phone call  
20 with my phone. This is a joke.”<sup>61</sup>
- 21 • **12/20/17:** “It is the night before we leave for 7 months in France and my THIRD replacement  
22 Google Pixel phone is not working. Google you have FAILED. I would like to tell everyone I  
23 know not to buy the product!!! The first phone lost microphone service at random times. The

24 <sup>56</sup> *Id.*

25 <sup>57</sup> *Id.*

26 <sup>58</sup> *Id.*

27 <sup>59</sup> *Id.*

28 <sup>60</sup> *Id.*

<sup>61</sup> [https://www.reddit.com/r/GooglePixel/comments/5wyvyy/about\\_to\\_get\\_my\\_5th\\_pixel\\_tomorrow\\_on\\_this\\_last/](https://www.reddit.com/r/GooglePixel/comments/5wyvyy/about_to_get_my_5th_pixel_tomorrow_on_this_last/) (last visited Feb. 2, 2018).

1 second one the same . . . and the third one is even worse. At least the other two had a period of  
2 service but this one is 3 days old!!!”<sup>62</sup>

3 94. In response to warranty claims, Google wasted its customers’ time with futile  
4 troubleshooting sessions, or provided ineffective repairs or Pixels with the same defect, often resulting  
5 in repeat failure. Google thereby precluded its customers from realizing warranty benefits.

6 95. Google’s designated third-party repair provider—uBreakiFix<sup>63</sup>—has acknowledged that  
7 the microphone defect is a common issue, involving a defective solder point. uBreakiFix employees  
8 have received training and guidance relating to the microphone defect based on the conclusion that the  
9 problem stems from a manufacturing defect on the phone’s circuit board. At least one uBreakiFix  
10 employee has termed the defect “unrepairable.” Technicians from other repair shops have reached the  
11 same conclusions.

12 96. Despite knowing of the Pixel’s defective nature before it placed the Pixel on the market  
13 and before Plaintiffs purchased their Pixels, Google failed to disclose the defect and its associated  
14 problems to Plaintiffs and other consumers prior to purchase and failed to provide Pixel owners with an  
15 adequate remedy when the defect manifested. Instead, Google downplayed the scope and severity of  
16 the problem, and tried to sweep the defect under the rug with half-apologies and ineffective warranty  
17 service. Meanwhile, Google continued to promote and sell the Pixel as top of the line and as offering a  
18 Siri competitor in Google Assistant even though the faulty microphones make the use of Google  
19 Assistant impossible.<sup>64</sup>

### 20 **CLASS ACTION ALLEGATIONS**

21 97. Plaintiffs bring this lawsuit under Federal Rules of Civil Procedure 23(a), (b)(1), (b)(2),  
22 and (b)(3) as representatives of the following class:

#### 23 **Nationwide Class**

24 All individuals in the United States who purchased a Google Pixel or Pixel  
25 XL smartphone, other than for resale, between October 4, 2016 and the  
26 present.

27 <sup>62</sup> <http://www.comparecellular.com/cell-phones/google-pixel/reviews.asp> (last visited Apr. 9, 2018).

28 <sup>63</sup> <https://support.google.com/store/answer/7182296?hl=en> (last visited Feb. 5, 2018).

<sup>64</sup> *E.g.*, <https://www.youtube.com/watch?v=Rykmwn0SMWU> (last visited Feb. 5, 2018).

**California Law Subclass**

All individuals in the United States who purchased a Google Pixel or Pixel XL smartphone, other than for resale, between October 4, 2016 and the present: (1) directly from Google; or (2) in California.

98. The following persons and entities are excluded from the class:

- Google, its officers, directors, employees, subsidiaries, and affiliates;
- all judges assigned to this case and any members of their immediate families; and,
- the parties’ counsel in this litigation.

Plaintiffs reserve the right to modify the class definitions based upon discovery and further investigation.

99. **Numerosity.** Google sold at least hundreds of thousands of Pixels across the United States.<sup>65</sup> Members of the class are widely dispersed throughout the country. The class members are so numerous that joinder is impracticable.

100. **Typicality.** Plaintiffs’ claims are typical of the claims of all class members in that Plaintiffs, like all class members, purchased Pixels that they would not have purchased, or would have paid substantially less for or returned for a refund, had they known of the defect or the fact that Google would respond inadequately when the defect manifested.

101. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the class. They have no interests antagonistic to the interests of other class members and are committed to vigorously prosecuting this case. Plaintiffs have retained competent counsel experienced in the prosecution of consumer protection class actions involving defective smartphones.

102. **Predominance.** Questions of law and fact common to class members predominate over any questions that may affect only individual class members, because Google has acted on grounds generally applicable to the class as a whole. Questions of law and fact common to the class include:

- Whether the Pixels were defective at the time of sale;
- Whether the defect substantially impairs the value of the Pixels;

<sup>65</sup> Juliet Gallagher, *In a Rare Moment, Pixel’s Sales Figures Are Revealed*, Gadget Hacks (June 13, 2017) (available at <https://android.gadgethacks.com/news/rare-moment-pixels-sales-figures-are-revealed-0178148/>) (last visited Feb. 5, 2018).

- 1 • Whether Google knew of the defect, but continued to promote and sell the Pixels
- 2 without disclosing the problems and their consequences to consumers;
- 3 • Whether a reasonable consumer would consider the defect and its consequences to be
- 4 material;
- 5 • Whether Google exercised the discretion it afforded itself under its warranty in good
- 6 faith;
- 7 • Whether Google breached the contractual covenant of good faith and fair dealing;
- 8 • Whether Google violated California’s Unfair Competition Law, CAL. BUS. & PROF.
- 9 CODE § 17200, *et seq.*, and Consumers Legal Remedies Act, CAL. CIV. CODE § 1750,
- 10 *et seq.*;
- 11 • Whether Plaintiffs overpaid for their phones due to the existence of the microphone
- 12 defect;
- 13 • Whether Plaintiffs are entitled to equitable relief, including restitution or injunctive
- 14 relief; and
- 15 • Whether Plaintiffs are entitled to damages and other monetary relief, and if so, in
- 16 what amount.

17 103. **Superiority.** A class action is superior to all other available methods for the fair and  
 18 efficient adjudication of this controversy. Because the amount of each individual class member’s claim  
 19 is small relative to the complexity of the litigation, and because of Google’s financial resources, class  
 20 members are unlikely to pursue legal redress individually for the violations detailed in this complaint.  
 21 Individualized litigation would significantly increase the delay and expense to all parties and to the  
 22 Court and would create the potential for inconsistent and contradictory rulings. By contrast, a class  
 23 action presents fewer management difficulties, allows claims to be heard which would otherwise go  
 24 unheard because of the expense of bringing individual lawsuits, and provides the benefits of  
 25 adjudication, economies of scale, and comprehensive supervision by a single court.

26 104. Class certification is also appropriate under Rules 23(b)(1) and (b)(2) because:  
 27  
 28



- 1 • The prosecution of separate actions by the individual members of the class would
- 2 create a risk of inconsistent or varying adjudications with respect to individual class
- 3 members, which would establish incompatible standards of conduct for Google;
- 4 • The prosecution of separate actions by individual class members would create a risk
- 5 of adjudications that would, as a practical matter, be dispositive of the interests of
- 6 other class members not parties to the adjudications, or would substantially impair or
- 7 impede their ability to protect their interests;
- 8 • Google acted or refused to act on grounds generally applicable to the class, thereby
- 9 making appropriate final injunctive relief with respect to the members of the class as
- 10 a whole; and
- 11 • The claims of class members include common issues whose efficient adjudication in a
- 12 class proceeding will materially advance the litigation.

13 105. Alternatively, class certification under Rule 23(c)(4) may be appropriate as to certain  
 14 issues because adjudication of such issues would materially advance the resolution of the litigation as a  
 15 whole and aid in achieving judicial economy and efficiency.

16 **CLAIMS FOR RELIEF**

17 106. Plaintiffs bring the four claims set forth below on behalf of the class under California  
 18 law. *See supra* ¶¶ 12–14.

19 107. In the alternative, Plaintiffs bring: (1) their common law claims for breach of the  
 20 Covenant of Good Faith and Fair Dealing, and for Fraudulent Concealment, on behalf of the California  
 21 Law Subclass under California law, and on behalf of all other class members under the laws of the  
 22 states in which they purchased their Pixel; and (2) their claims under California’s Unfair Competition  
 23 Law and Consumers Legal Remedies Act on behalf of the California Law Subclass only.

24 **FIRST CLAIM FOR RELIEF**  
 25 **Breach of the Covenant of Good Faith and Fair Dealing**

26 108. Plaintiffs incorporate the above allegations by reference.

27 109. Google created and extended to consumers an express warranty in connection with every  
 28 sale of Pixel and Pixel XL phones by Google and its authorized resellers. Under this contract, Google  
 warranted that the Pixel would be “free from defects in materials and workmanship under normal use in

1 accordance with Google’s published user documentation for one year from the date of original retail  
2 purchase . . . .”<sup>66</sup>

3 110. Google’s warranty provides:

4 If a defect arises and you return your Phone during the Limited Warranty  
5 period (which is one year for new devices and ninety days for refurbished  
6 devices), Google will in its sole discretion and to the extent permitted by law  
7 either repair your Phone using new or refurbished parts, replace your Phone  
8 with a new or refurbished Phone functionally at least equivalent to yours, or  
accept the return of the Phone in exchange for a refund of the purchase price  
you paid for the Phone.<sup>67</sup>

9 111. A covenant of good faith and fair dealing is implied in every contract and imposes upon  
10 each party a duty of good faith and fair dealing in its performance. Common law calls for substantial  
11 compliance with the spirit, not just the letter, of a contract in its performance. The duty to act in good  
12 faith and deal fairly requires adherence to commercial norms and prevents a contracting party from  
13 acting in contravention of the counterparty’s objectively reasonable expectations arising from the  
14 agreement.

15 112. Plaintiffs fulfilled any and all obligations arising under Google’s express warranty.  
16 Plaintiffs used their Pixels in an ordinary manner and promptly notified Google that their Pixels were  
17 not free from defects in materials and workmanship.

18 113. Google breached the covenant of good faith and fair dealing that accompanied its  
19 express warranty, and failed to exercise the discretion it reserved to itself under the terms of its  
20 warranty in good faith, in at least the following respects:

- 21 a. refusing to furnish Plaintiffs and class members with functional, non-defective  
22 replacement phones;
- 23 b. refusing to provide effective repairs free of charge;
- 24 c. refusing to refund the purchase price of Pixels that manifested the microphone  
25 defect; and

26  
27 <sup>66</sup> [https://support.google.com/store/troubleshooter/3070579?visit\\_id=1-636451602353993137-3447863607&p=pixelphonewarranty&rd=1#ts=7168940](https://support.google.com/store/troubleshooter/3070579?visit_id=1-636451602353993137-3447863607&p=pixelphonewarranty&rd=1#ts=7168940) (last visited Feb. 5, 2018).

28 <sup>67</sup> *Id.*

1 d. electing to provide consumers with replacement (often refurbished) Pixels that  
2 Google knew were defective, resulting in consumers experiencing multiple failures across different  
3 Pixels.

4 114. Google's conduct departed from commercially reasonable behavior, deprived Plaintiffs  
5 of the intended benefits of Google's warranty, and frustrated their reasonable and legitimate  
6 expectation that Google would exercise its discretion under the warranty to furnish a refund, or a phone  
7 free of defects in materials and workmanship, to consumers who sought warranty service after their  
8 Pixels failed.

9 115. In addition, because Google knew of the defect yet continued to sell defective Pixels, the  
10 one-year limitation asserted in Google's warranty is unenforceable. That time limit is substantively  
11 unconscionable, unduly one-sided, and inadequate to provide Plaintiffs with the benefit of their bargain  
12 given the severity of the defect, the importance of smartphones in daily life, and their reasonably  
13 anticipated effective life. Plaintiffs and class members reasonably expected that the Pixels would be  
14 free of defects and perform their basic functions without impediment for significantly longer than one  
15 year. Google's one-year time limit unreasonably favors Google where the average mobile phone lasts  
16 two-and-one-half years. Google's own warranty for the second-generation Pixel devices extends for  
17 two years. As such, Google acknowledges that consumers reasonably expect a smartphone to last at  
18 least two years.<sup>68</sup> Particularly where Google engaged in a practice of running out the clock on Pixel  
19 purchasers' warranty periods by attempting futile troubleshooting and replacing defective phones with  
20 defective phones, Google's limitation of the warranty term to 12 months is overly harsh and void as  
21 contrary to public policy.

22 116. The one-year time limit also is procedurally unconscionable. Google knew of and  
23 expressly acknowledged the defect on November 8, 2016, before Plaintiffs purchased their devices  
24 (*e.g.*, ¶ 78, *supra*), but Google failed to disclose the defect to any of them. Further, Plaintiffs had no  
25 meaningful choice with regard to the one-year time limit that Google unilaterally imposed for its Pixel  
26 express warranty. There was a gross disparity in bargaining power at the point of sale between Google  
27

28 <sup>68</sup> [https://support.google.com/store/troubleshooter/3070579?hl=en&ref\\_topic=3244667#ts=7168940%2C7544604](https://support.google.com/store/troubleshooter/3070579?hl=en&ref_topic=3244667#ts=7168940%2C7544604)  
(last visited Apr. 10, 2018).

1 and Plaintiffs, particularly given Google’s financial resources and exclusive pre-sale knowledge of the  
2 defect, the numerous complaints that were made directly to Google, and the pre-printed form on which  
3 the warranty terms appeared. No Plaintiff was made aware of these terms prior to purchase—even  
4 though Google knew the Pixels were defective at the time of sale and would fail. Consumers were  
5 unaware of the defective nature of the Pixel and would not have purchased the device, or would not  
6 have purchased it at the price they did, had they known of its true characteristics.

7 117. Given these circumstances, any attempt by Google to disclaim or limit its express  
8 warranties vis-à-vis consumers would be ineffective. Any such asserted limitation is unconscionable  
9 and unenforceable because Google knowingly sold a defective product without informing consumers of  
10 the defect and failed to honor its express warranties in good faith.

11 118. As a direct and proximate result of Google’s violations of the covenant of good faith and  
12 fair dealing that accompanied its express warranty, Plaintiffs have been damaged in an amount to be  
13 proven at trial.

#### 14 **SECOND CLAIM FOR RELIEF**

#### 15 **Violation of the Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200, *et seq.* (“UCL”)**

16 119. Plaintiffs incorporate the above allegations by reference.

17 120. The UCL proscribes acts of unfair competition, including “any unlawful, unfair or  
18 fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” CAL. BUS.  
19 & PROF. CODE § 17200.

20 121. Google’s conduct is unlawful, in violation of the UCL, because it violates California’s  
21 Song-Beverly Consumer Warranty Act, Consumers Legal Remedies Act, and False Advertising Law.

22 122. Google’s conduct is unfair in violation of the UCL because it violates California public  
23 policy, legislatively declared in the Song-Beverly Consumer Warranty Act, requiring a manufacturer to  
24 ensure that goods it places on the market are fit for their ordinary and intended purposes. Google was a  
25 manufacturer of the Pixel because it manufactured, assembled, and produced the product.<sup>69</sup> Google  
26 violated the Song-Beverly Act because the Pixel was unfit for its most basic use: talking on the phone.

27  
28 

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<sup>69</sup> CAL. CIV. CODE § 1791(j).

1 Mr. Alcaraz and others who purchased the Pixel in California were subject to Google’s Song-Beverly  
2 violations.

3 123. Google acted in an unscrupulous, oppressive, and substantially injurious manner,  
4 including by:

- 5 a. Promoting and selling phones it knew were defective;
- 6 b. Promoting and selling phones containing a defect that caused their premature  
7 failure;
- 8 c. Replacing defective phones with other defective phones, or attempting futile  
9 troubleshooting or repairs not directed to the underlying defect where, instead, Google should have  
10 provided refunds or non-defective phones to consumers with failed Pixels;
- 11 d. Unilaterally imposing an unconscionably short warranty period and refusing to  
12 provide warranty relief where the microphone defect manifested outside the warranty period;
- 13 e. Failing to exercise adequate quality control and due diligence over the Pixels  
14 before launch, and instead rushing the devices to market; and
- 15 f. Minimizing the scope and severity of the defect in public statements instead of  
16 acknowledging the defect and providing adequate relief to consumers.

17 124. The gravity of harm resulting from Google’s unfair conduct greatly outweighs any  
18 potential utility. The practices of selling defective phones without providing an adequate remedy to  
19 cure the defect—and continuing to sell those phones without full and fair disclosure of the defect—  
20 harms the public at large and is part of a common and uniform course of wrongful conduct. The harm  
21 from Google’s conduct was not reasonably avoidable by consumers because Google did not disclose  
22 the defect, even after receiving a large volume of public consumer complaints.

23 125. In lieu of Google’s practices described above, there are reasonably available alternatives  
24 that would further its business interests of satisfying and retaining its customers while maintaining  
25 profitability, such as: (1) allowing adequate development time to analyze the results of pre-release  
26 testing and implementing corrective measures, (2) disclosing the defect to prospective purchasers, (3)  
27 implementing an effective, permanent fix for defective phones, (4) extending the phone’s warranty, and  
28 (5) offering refunds or suitable non-defective replacement phones to customers whose phones failed.

1           126. Google’s conduct, as detailed in this complaint, is fraudulent in violation of the UCL  
2 because it is likely to deceive a reasonable consumer. Google’s fraudulent acts include:

3           a. Knowingly and intentionally concealing from Plaintiffs the existence of the  
4 defect in the Pixels;

5           b. Volunteering information to Plaintiffs through advertising and other means that  
6 the Pixels were capable of serving their most basic function—making and receiving phone calls—  
7 without disclosing information, *i.e.*, the microphone defect, that would have materially qualified these  
8 partial representations; and

9           c. Promoting Google Assistant functionality through advertising, the standard Pixel  
10 set-up process, and other means while knowingly failing to disclose that the microphone defect  
11 prevents customers from using Google Assistant.

12           127. Google had ample means and opportunities to alert Plaintiffs to the microphone defect,  
13 including on its web platform selling the Pixel and as part of the standardized phone set-up process.  
14 But, despite knowing of the defect by no later than the day after product release, Google failed to  
15 disclose it to Plaintiffs. Had Google disclosed the defect, Plaintiffs would not have purchased their  
16 Pixels, would not have purchased them at the prices they did, or would have returned them during the  
17 buyer’s remorse period.

18           128. Google had a duty to disclose the microphone defect given its exclusive knowledge of  
19 the condition prior to the sale of the Pixels and because it made unqualified partial representations  
20 about the quality, characteristics, and properties of the phones without also disclosing the microphone  
21 defect.

22           129. Plaintiffs suffered injury in fact, including lost money or property, as a result of  
23 Google’s unlawful, unfair, and fraudulent acts and omissions. Absent Google’s unlawful, unfair, and  
24 fraudulent conduct, Plaintiffs would not have purchased their Pixels, would not have purchased them at  
25 the prices they did, or would have returned their devices for a refund during the buyer’s remorse period.

26           130. As is described in paragraph 53, *supra*, Plaintiffs may wish to purchase other Pixel  
27 products in the future, but are impaired from presently doing so in view of their inability to rely on  
28 Google’s statements concerning such products. Plaintiffs seek to enjoin Google from further

1 commission of these unlawful, unfair, and fraudulent acts or practices under CAL. BUS. & PROF. CODE §  
2 17203.

3 131. Plaintiffs accordingly seek such orders or judgments as may be necessary to enjoin  
4 Google from continuing its unfair, unlawful, and fraudulent practices, and to restore to Plaintiffs any  
5 money Google acquired through its prohibited acts and practices, including restitution, as provided for  
6 under the UCL, in addition to reasonable attorneys' fees and costs.

7 **THIRD CLAIM FOR RELIEF**

8 **Violation of California's Consumers Legal Remedies Act, CAL. CIV. CODE § 1750, *et seq.***  
9 **("CLRA")**

10 132. Plaintiffs incorporate the above allegations by reference.

11 133. Google is a "person" within the meaning of Civil Code §§ 1761(c) and 1770, and  
12 provided "goods" within the meaning of Civil Code §§ 1761(a) and 1770.

13 134. Google's acts and practices, as alleged in this complaint, violate the CLRA, CAL. CIV.  
14 CODE §§ 1770(a)(5), (7), (9), and (19), because they constitute unfair and deceptive acts and practices  
15 in connection with transactions (the sale of defective Pixels to Plaintiffs). This conduct was intended to  
16 result and did result in the sale of these goods to consumers. Specifically, Google:

- 17 • Represented that the Pixels have characteristics, uses, and benefits they do not have;
- 18 • Represented that the Pixels are of a standard, quality, or grade that they are not;
- 19 • Advertised the Pixels with intent not to sell them as advertised; and
- 20 • Inserted unconscionable warranty limitations and disclaimers in its contracts with  
21 consumers.

22 135. As a direct and proximate result of Google's conduct, Plaintiffs have been harmed in  
23 that they purchased products they otherwise would not have purchased—either at all or at the premium  
24 prices they paid—or that they otherwise would have returned for a full refund during their applicable  
25 remorse periods. Meanwhile, Google has gained more revenue than it otherwise would have, unjustly  
26 enriching itself.

27 136. Plaintiffs thus seek actual damages, equitable relief, reasonable attorneys' fees and costs,  
28 declaratory relief, punitive damages, and a permanent injunction enjoining Google from engaging in  
this prohibited conduct.





1           143. All Plaintiffs were exposed to Google’s specific representations about the Pixel both  
2 before and immediately after purchase, and within the time window in which they could have returned  
3 their Pixels for a full refund. See ¶¶ 17, 25, 34, 45, *supra*. None of the informational sources that  
4 Plaintiffs encountered—advertisements, the standard Pixel set-up screens, the Pixel’s product  
5 packaging, Google’s website, or the Pixel launch event—contained any information about the  
6 microphone defect.

7           144. In connection with its ongoing promotion and sale of the Pixel, Google continues to  
8 defraud consumers by purposely concealing material information about the defective nature of the  
9 devices.

10           145. Plaintiffs were unaware of the omitted material facts and would not have acted as they  
11 did had those facts been disclosed. Had Google notified them of the microphone defect, Plaintiffs  
12 would not have purchased Pixels, would not have purchased Pixels at the price they did, or would have  
13 returned the devices for a refund during the two-week remorse period.

14           146. Plaintiffs reasonably relied to their detriment upon Google’s material omissions and  
15 fraudulent misrepresentations regarding the quality of the Pixels and the absence of the defect in  
16 deciding to purchase their phones.

17           147. Plaintiffs sustained damage as a direct and proximate result of Google’s deceit and  
18 fraudulent concealment. Among other damages, Plaintiffs did not receive the value of the premium  
19 price they paid for their phones. Had they known of the defect, Plaintiffs would not have purchased  
20 their Pixels or would have paid substantially less for them.

21           148. Google’s acts were done maliciously, oppressively, deliberately, with intent to defraud,  
22 and in reckless disregard of Plaintiffs’ rights, interests, and well-being, to enrich Google. Such conduct  
23 warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future,  
24 which amount is to be determined according to proof.

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Andrew W. Ferich (*pro hac vice*)  
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zpb@chimicles.com

*Counsel for Plaintiffs*



# EXHIBIT 1

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

PATRICIA WEEKS, ALICIA HELMS, BRIAN  
MCCLOY, and ADRIAN ALCARAZ, on behalf  
of themselves and all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:18-cv-00801-NC

**CLRA VENUE DECLARATION OF  
PLAINTIFF PATRICIA WEEKS  
PURSUANT TO CALIFORNIA CIVIL  
CODE SECTION 1780(d)**

1 I, Patricia Weeks, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could  
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Second Amended Class Action Complaint,  
6 which is based in part on violations of the Consumers Legal Remedies Act, California Civil Code  
7 section 1750 *et seq.*

8 4. The Second Amended Class Action Complaint has been filed in the proper place for trial  
9 of this action.

10 5. Defendant Google LLC has its principal place of business in Mountain View, California,  
11 which is within Santa Clara County. Google conducts substantial business, including the acts and  
12 practices at issue in this action, within Santa Clara County.

13 6. I purchased my Google Pixel smartphone directly from Google's online store.  
14

15 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
16 and correct to the best of my knowledge. Executed on September \_\_, 2018 in Kenneth City, Florida.  
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19 By: 

20 PATRICIA WEEKS  
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# EXHIBIT 2



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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

Case No. 5:18-cv-00801-NC

PATRICIA WEEKS, ALICIA HELMS, BRIAN  
MCCLOY, and ADRIAN ALCARAZ on behalf  
of themselves and  
all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

**CLRA VENUE DECLARATION OF  
PLAINTIFF ALICIA HELMS  
PURSUANT TO CALIFORNIA CIVIL  
CODE SECTION 1780(d)**

I, Alicia Helms, declare as follows:

1. I have personal knowledge of the facts stated herein and, if called upon to do so, could competently testify thereto.
2. I am a Plaintiff in the above-captioned action.
3. I submit this declaration in support of the Second Amended Class Action Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil Code section 1750 *et seq.*
4. The Second Amended Class Action Complaint has been filed in the proper place for trial of this action.
5. Defendant Google LLC has its principal place of business in Mountain View, California, which is within Santa Clara County. Google conducts substantial business, including the acts and practices at issue in this action, within Santa Clara County.
6. I purchased my Google Pixel smartphone directly from Google's online store.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed on September \_\_, 2018 in Greensboro, North Carolina.

By   
ALICIA HELMS

# EXHIBIT 3

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

Case No. 5:18-cv-00801-NC

PATRICIA WEEKS, ALICIA HELMS, BRIAN  
MCCLOY, and ADRIAN ALCARAZ, on behalf  
of themselves and all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

**CLRA VENUE DECLARATION OF  
PLAINTIFF BRIAN MCCLOY  
PURSUANT TO CALIFORNIA CIVIL  
CODE SECTION 1780(d)**

1 I, Brian McCloy, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could  
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Second Amended Class Action Complaint,  
6 which is based in part on violations of the Consumers Legal Remedies Act, California Civil Code §§  
7 1750 *et seq.*

8 4. The Second Amended Class Action Complaint has been filed in the proper place for trial  
9 of this action.

10 5. Defendant Google LLC has its principal place of business in Mountain View, California,  
11 which is within Santa Clara County. Google conducts substantial business, including the acts and  
12 practices at issue in this action, within Santa Clara County.

13 I declare under penalty of perjury under the laws of the United States that the foregoing is true  
14 and correct to the best of my knowledge. Executed on 8/31/2018, 2018 in Chicago, Illinois.

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16 By: 

17 BRIAN MCCLOY  
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**EXHIBIT 4**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

PATRICIA WEEKS, ET AL., individually and  
on behalf of all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:18-cv-00801-NC

**CLRA VENUE DECLARATION OF  
PLAINTIFF ADRIAN ALCARAZ  
PURSUANT TO CALIFORNIA CIVIL  
CODE SECTION 1780(d)**

I, Adrian Alcaraz, declare as follows:

1. I have personal knowledge of the facts stated herein and, if called upon to do so, could competently testify thereto.
2. I am a Plaintiff in the above-captioned action.
3. I submit this declaration in support of the Second Amended Class Action Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil Code §§ 1750 *et seq.*
4. The Second Amended Class Action Complaint has been filed in the proper place for trial of this action.
5. Defendant Google LLC has its principal place of business in Mountain View, California, which is within Santa Clara County. Google conducts substantial business, including the acts and practices at issue in this action, within Santa Clara County.
6. I purchased my Google Pixel XL smartphone in California from Verizon's online store.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed on August 29, 2018 in West Covina, California.

By:   
ADRIAN ALCARAZ